

Criminal Revision No. 54 of 2003

Pushkar Singh Bisht		Revisionist
Versus		
State of Uttaranchal and others		Respondents.
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Hon’ble P.C.Verma,A.C.J.

This revision petition has been filed by the petitioner challenging the order dated 19.4.2003, by which the application of the revisionist moved under section 311 Cr.P.C. has been rejected.

The revisionist is a complainant in the case. It is a case of daylight murder and the complainant/revisionist is the father of the deceased. It appears that certain prosecution witnesses have been declared hostile to whom the complainant wants to re-examine in order to establish the occurrence. The power under section 311 Cr.P.C. has been conferred on the Magistrate containing a public policy that there should be full opportunity to the prosecution to produce the evidence so that true and correct facts may come to light. It appears that the prosecution has not come up with an application under section 311 Cr.P.C. in the trial court that some facts in the statements have not come earlier when the witnesses were examined.

In the present case the complainant has moved the application under Section 311 Cr.P.C. The trial Court ought to have allowed the application keeping in view the provisions of Section 311 Cr.P.C. in mind. It is obvious that the complainant will not move any application in order to delay the trial. His own son was shot dead. He found that the full facts were not brought before the Court by the witnesses as statements of the witnesses were not containing full facts. There may be some treat to the witnesses at the time the statements were earlier recorded. Application under section 311 should not be rejected out rightly, if it is moved for the purpose which is required to meet the ends of justice.

The learned counsel for the accused respondents submits that in the facts and circumstances of this case the application was rightly rejected as statements of the accused under section 313 Cr.P.C. were already recorded. The argument of learned counsel for the accused is misconceived. Section 311 Cr.P.C. contains the words “ at any stage of the trial”. Section 311 provides that the witnesses can be re-examined at any stage. The word “at any stage” used in this section should not be given narrow meaning it should be extended at its widened term. Reliance has been placed by the learned counsel for the accused respondent on the case law **Mir Mohad Omar and others vs. State of Bengal** (1989 A.Cr.R. (SC) 693) and **Shiv Kumar vs. Hukum Chand and another** (1999 (39) A.C.C. (SC) 715). The case laws cited by the learned counsel for the accused respondents are not applicable to the facts of instant case. Here in preset case since it is a day light murder and the complainant who is the father of the deceased has disclosed different set of facts which are distinct and distinguished from the facts of the case laws reported above.

The learned counsel for the respondents next argued that section 311 Cr.P.C. contains two words ‘**may**’ and ‘**shall**’. Therefore, for mandatory purposes the word ‘**shall**’ is to be used while the word ‘**may**’ is to be used where discretion is exercised. Here the discretion has to be exercised to give effect to the policy contained in the section. The Sessions Judge should not have rejected the application merely on the ground that statements of the accused under section 313 Cr.P.C. have been recorded.

The learned counsel for the respondents lastly argued that the application was moved by a private counsel. It was not moved by the public prosecutor. The complainant has filed power and he was prosecuting his case alongwith the prosecution. In case the prosecution did not move the application, which ought to have moved by the public prosecution, it cannot be held that the application under section 311Cr.P.C. cannot be moved by the complainant. Even otherwise the

Court can exercise its power suo motu. Thus, the ratio of the case laws cited by the learned counsel for the respondent is not applicable in this case as the scope of application has not been considered in the cases cited above.

The applicant has given in the application the full facts and reasons for which he wanted the witnesses to be summoned and re-examined. In my opinion, the trial court ought to have allowed the application for re-examining the witnesses.

Therefore, revision is allowed. Order dated 19.4.2003 passed by the Additional Sessions Judge, Udham Singh Nagar is set aside. The witnesses shall be summoned and shall be permitted to be re-examined on the next date fixed.

(P.C.Verma, A.C.J.)

16.06.2003
P.Singh